

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05CV11039EFH

SOUTHEAST FLOATING DOCKS, INC.,

Plaintiff

v.

AGM MARINE CONTRACTORS, INC.,
CHILDS ENGINEERING CORPORATION,
AND THE TOWN OF PROVINCETOWN,

Defendants

DEFENDANT TOWN OF
PROVINCETOWN'S PRIVILEGE
LOG PURSUANT TO DISTRICT
COURT'S OCTOBER 18, 2007
ORDER, SUPPLEMENTED
PURSUANT TO DISTRICT COURT'S
FEBRUARY 21, 2008 ORDER

NO.	DATE	FROM	TO	CC	DOC. TYPE	SUBJECT	SUMMARY OF CONTENTS
1	12/12/2003	DFG	JWG	KB	E-mail	Storm Damage	Request for legal advice in connection with the failure of the dock system during the December 2003 storm; and transmitting (1) copies of 12/10/03 and 12/11/03 memoranda of DFG to Building Committee and KB, respectively, regarding strategy to repair dock system, and (2) copy of notice of building committee meeting.
2	12/12/2003	RH	DFG		E-mail	MacMillan Pier	Discussion regarding Town's search for expert witness.
3	12/15/2003	RH	DFG		E-mail	MacMillan Pier	Discussion regarding remaining project work and contractor's insurance coverage.
4	12/15/2003	DFG	RH		E-mail	Proposal for Engineering Services	Discussion regarding Town's search for expert witness and transmitting proposal of Childs Engineering Corp.
5	12/16/2003	RH	DFG		E-mail	Proposal for Engineering Services	Discussion regarding Town's search for expert witness and proposal of Childs Engineering Corp.

6	12/16/2003	RH	DFG		E-mail	Proposal for Engineering Services	Discussion regarding contractor's insurance coverage.
7	12/23/2003	RH	DFG		E-mail	MacMillan Pier	Discussion regarding removal of damaged dock system and payment for the removal.
8	12/31/2003	RH	DFG		E-mail	MacMillan Pier Project	Discussion regarding payment for the removal of damaged dock system.
9	02/04/2004	RH	DFG		E-mail	MacMillan Pier	Discussion regarding upcoming meeting with Childs Engineering Corp.
10	02/09/2004	KB	JWG		E-mail	Provincetown Litigation	Discussion regarding litigation matters discussed by the BOS in executive session meeting.
11	02/17/2004	JWG	KB	DD	E-mail	Provincetown Litigation	Discussion regarding Town Counsel's search for expert witness.
12	02/29/2004	KB	JWG, DD, RH	DFG	E-mail	Dusenberry Proposal	Discussion regarding the proposal of Simpson, Gumpertz & Heger Inc. ("SGH").
13	03/02/2004	DFG	RH	JWG, KB	E-mail	MacMillan Pier	Discussion regarding Town Counsel's discussions with SGH.
14	03/08/2004	DFG	KB	RH, ST	E-mail	MacMillan Pier	Discussion regarding SGH visit to project site and the re-installation of undamaged dock components.
15	03/09/2004	DFG	RH	ST, KB	E-mail	MacMillan Pier	Discussion regarding the making of a demand on AGM Marine Contractors Inc. ("AGM").
16	03/09/2004	DFG	RH		E-mail	Report to Town Manager on need for berthing	Transmitting 12/26/03 memo of DFG to KB regarding meeting to establish guidelines for small boat fisheries berthing at the pier.
17	03/10/2004	RH	DFG		E-mail	Reinstallation Work	Transmitting for review by Town letter drafted by Town Counsel and addressed to counsel for AGM.
18	03/10/2004	DFG	RH		E-mail	Reinstallation Work	Discussion regarding additional items to include in Town Counsel's draft letter to counsel for AGM.

19	03/10/2004	DFG	RH		E-mail	Reinstallation Work	Discussion regarding additional items to include in Town Counsel's draft letter to counsel for AGM.
20	03/11/2004	KB	DFG	JWG, ST, RH	E-mail	MacMillan Pier	Discussion regarding AGM's request for a meeting with the Town to discuss issues raised in Town Counsel's letter to counsel for AGM.
21	03/15/2004	DFG	RH KB	ST	E-mail	MacMillan Pier	Confirmation of upcoming meeting between Town and AGM.
22	03/16/2004	DFG	RH	KB	E-mail	MacMillan Pier	Confirmation of fax sent by Town to Town Counsel of certain weekly reports prepared by the clerk of the works for the project.
23	03/17/2004	DFG	RH	KB	E-mail	Notice of Warranty Claim	Discussion regarding Town's review of Town Counsel's draft warranty-claim letter to Southeast Floating Docks, Inc. ("Southeast").
24	03/26/2004	RH	DFG		E-mail	MacMillan Pier	Discussion regarding potential meeting between consultants for AGM and the Town.
25	03/30/2004	RH	DFG		E-mail	MacMillan Pier	Discussion regarding status of SGH calculation of wave heights during December 2003 storm.
26	04/01/2004	RH	DFG		E-mail	MacMillan Pier	Discussion regarding status of SGH calculation of wave heights during December 2003 storm.
27	04/05/2004	RH	DFG		E-mail	MacMillan Pier Video Tape	Discussion regarding copy of video recording of December 2003 storm.
28	04/06/2004	RH	DFG		E-mail	MacMillan Pier	Request for information regarding progress of re-installation of undamaged components of dock system.
29	04/12/2004	DFG	RH	KB	E-mail	MacMillan Pier/AGM Marine	Discussion regarding Southeast's request to view the dock system.
30	04/12/2004	DFG	RH	KB	E-mail	MacMillan Pier/AGM Marine	Discussion regarding Southeast's request to view the dock system, and upcoming meeting between Southeast, Town and AGM.

31	05/25/2004	DFG	RH	KB	E-mail	Provincetown MacMillan Pier	Discussion regarding SGH power point slides regarding wave heights and wind speed during December 2003 storm.
32	06/16/2004	RH	DFG		E-mail	MacMillan Pier	Confirmation of Town Counsel's upcoming meeting with BOS.
33	06/16/2004	DFG	RH		E-mail	MacMillan Pier	Confirmation of Town Counsel's upcoming meeting with BOS.
34	06/29/2004	KB	RH		E-mail	MacMillan Pier Damage	Confirmation of BOS vote in executive session meeting authorizing Town Counsel to make claim against AGM and its surety, Zurich North America ("Zurich") and Southeast.
35	07/26/2004	RH	DFG	KB	E-mail	MacMillan Pier	Discussion regarding Zurich's request for meeting in response to Town's bond claim.
36	07/27/2004	DFG	RH		E-mail	MacMillan Pier	Discussion regarding Zurich's request for meeting in response to Town's bond claim.
37	07/27/2004	RH	DFG	KB	E-mail	MacMillan Pier	Confirmation of meeting between Town, AGM and Zurich.
38	08/31/2004	RH	DFG	KB	E-mail	Floating Dock System	Discussion regarding meeting between Town, AGM and Zurich and AGM's expression of willingness to install a new dock system for the Town.
39	09/03/2004	KB	DFG	RH, MJ	E-mail	MacMillan Pier Repairs	Discussion regarding options for repair of the dock system.
40	09/03/2004	DFG	KB	RH, MJ	E-mail	MacMillan Pier Repairs	Transmitting, and discussion regarding, DFG's incomplete draft report about Town's strategy for litigation and for the repair of the dock system.
41	09/08/2004	KB	DFG	RH, MJ	E-mail	MacMillan Pier Repairs	Confirmation of upcoming BOS executive session meeting regarding repair options for the dock system.
42	09/08/2004	DFG	RH, KB		E-mail	MacMillan Pier Repairs	Discussion regarding need for Town Counsel to attend upcoming executive session meeting of BOS.

43	09/09/2004	DFG	RH, KB		E-mail	MacMillan Pier Repairs	Discussion of upcoming executive session meeting of BOS, and Town Counsel's opinion regarding settlement.
44	09/09/2004	KB	RH, DFG		E-mail	MacMillan Pier Repairs	Discussion regarding upcoming executive session meeting of BOS and Town Counsel's opinion regarding possible settlement.
45	09/22/2004	KB	DFG	RH	E-mail	MacMillan Pier Repairs	Discussion regarding upcoming executive session meeting of BOS and Town Counsel's opinion regarding possible settlement.
46	10/20/2004	RH	DFG		E-mail	MacMillan Pier	Discussion regarding status of settlement negotiations between Town and AGM.
47	11/15/2004	RB	KB, DFG	RH, MJ	E-mail	MacMillan Pier-Floating Dock System	Discussion regarding status of review of potential repair options for dock system.
48	11/15/2004	KB	DFG, RB	RH, MJ	E-mail	MacMillan Pier-Floating Dock System	Discussion regarding status of review of potential repair options for dock system.
49	11/16/2004	KB	RM	RH, MJ, DFG, RB	E-mail	MacMillan Pier-Floating Dock System	Discussion regarding status of review of potential repair options for dock system.
50	11/22/2004	RH	DFG		E-mail	MacMillan Pier-Pier Corp.	Discussion regarding consensus on the layout of the dock system to service the fleet.
51	11/30/2004	DFG	RH	KB	E-mail	MacMillan Pier	Discussion regarding the Pier Corporation's plan for the restoration of the dock system; and transmitting notice of 12/13/04 public hearing.
52	12/06/2004	DFG	RH	JWG, KB	E-mail	Matrix for Litigation	Transmitting, and discussion regarding, list of Town's options in litigation prepared at the request of Town Counsel (the "Litigation Matrix").
53	12/09/2004	KB	DFG, JG, DD, RH		E-mail	Matrix for Litigation	Discussion regarding fax from Town Counsel and Litigation Matrix; and transmitting copy of Litigation Matrix.

54	12/10/2004	RH	DFG, KB, DD		E-mail	MacMillan Pier	Transmitting, and discussion regarding, the Litigation Matrix and Town Counsel's revisions to the same.
55	12/10/2004	KB	RH		E-mail	Floating Docks-Revised Matrix for Litigation	Transmitting, and discussion regarding, the Litigation Matrix and Town Counsel's revisions to the same.
56	12/10/2004	KB	RH, DD	JWG	E-mail	Floating Dock recommend Joint Memo	Transmitting to the Town Counsel a copy of a 11/12/07 memorandum from the Building Committee and Pier Corporation to KB and BOS regarding options for the repair of the dock system.
57	12/13/2004	DFG	KB		E-mail	Floating Dock recommend Joint Memo	Discussion regarding concerns voiced to the Town by Town Counsel.
58	01/11/2005	RH	DFG		E-mail	MacMillan Pier	Request for information regarding details of dock system that AGM has agreed to install.
59	01/14/2005	RH	DFG	KB	E-mail	MacMillan Pier/Settlement Agreement	Transmitting, and discussion regarding, draft of settlement agreement between Town and AGM.
60	01/14/2005	RH	DFG	KB	E-mail	MacMillan Pier/Settlement Agreement	Transmitting, and discussion regarding, draft of settlement agreement between Town and AGM.
61	01/25/2005	RH	DFG	KB	E-mail	MacMillan Pier	Request for comments regarding draft settlement agreement and information regarding timber floats to be installed by AGM.
62	02/02/2005	DFG	RH	JWG, KB, ST	E-mail	MacMillan Pier/Settlement Agreement	Discussion regarding the type of floats to be installed by AGM as part of the settlement with the Town.
63	02/03/2005	RH	DFG	KB	E-mail	AGM/Settlement Agreement	Transmitting, and discussion regarding, draft settlement agreement.
64	02/14/2005	RH	KB	DFG	E-mail	MacMillan Pier	Discussion regarding revisions to settlement agreement proposed by AGM's counsel.

65	02/17/2005	RH	DFG		E-mail	MacMillan Pier	Discussion regarding cost and plan of the remedial work to be performed by AGM as part of the settlement with the Town.
66	02/17/2005	RH	DFG		E-mail	MacMillan Pier	Discussion regarding cost and plan of the remedial work to be performed by AGM as part of the settlement with the Town.
67	02/25/2005	RH	DFG		E-mail	Floating Dock	Transmitting, and discussion regarding, a revised settlement agreement between the Town and AGM.
68	02/28/2005	RH	DFG		E-mail	Floating Dock	Discussion regarding the remedial dock system proposed to be installed by AGM; and transmitting, and discussion regarding, revised settlement agreement and technical specification for inclusion therein.
69	03/02/2005	RH	DFG	KB	E-mail	Floating Dock Settlement Agreement	Transmitting, and discussion regarding, draft of settlement agreement between the Town and AGM.
70	03/04/2005	RH	DFG	KB	E-mail	MacMillan Pier	Discussion regarding the specification proposed to be included in the settlement agreement by AGM; and transmitting, and discussion regarding, revised settlement agreement.
71	03/14/2005	RH	DFG		E-mail	MacMillan Pier	Request for information regarding status of settlement agreement.
72	03/14/2005	RH	DFG		E-mail	MacMillan Pier	Request for information regarding status of settlement agreement.
73	03/21/2005	DFG	RH	KB	E-mail	MacMillan Pier	Discussion regarding Town's comments on settlement agreement and specification attached thereto.
74	03/22/2005	RH	DFG	KB	E-mail	Floating Dock	Discussion regarding SGH review of submittals during the installation of the new dock system by AGM.

75	03/22/2005	RH	DFG		E-mail	AGM/MacMillan Pier	Request for copy of change order for inclusion as exhibit to settlement agreement.
76	03/22/2005	RH	DFG		E-mail	Floating Dock	Request for copy of change order for inclusion as exhibit to settlement agreement.
77	03/28/2005	DFG	RH	KB	E-mail	MacMillan Pier	Discussion regarding AGM's signing of the settlement agreement.
78	03/31/2005	RH	KB	DFG	E-mail	MacMillan Pier	Discussion regarding fax of letter to Town.
79	04/19/2005	RH	DFG		E-mail	Provincetown Release	Transmitting, and discussion regarding, release agreement between SGH and Town in connection with SGH's administration of the repair work to be performed by AGM.
80	04/20/2005	DFG	RH, KB		E-mail	SGH Release	Discussion regarding, release agreement between SGH and Town in connection with SGH's administration of the repair work to be performed by AGM.
81	02/03/2004	KB	JWG	BOS, DFG	Facsimile	Floating Dock Costs	Transmitting to Town Counsel copy of 1/30/04 memo from ST to KB regarding costs of removal of the damaged dock system.
82	02/06/2004	RH	KB		Facsimile	MacMillan Pier Reconstruction	Discussion regarding Town Counsel's opinion of the Town's claims arising out of the failure of the dock system.
83	02/27/2004	RH	KB	BOS, DFG	Memo	MacMillan Pier Reconstruction	Discussion regarding Town Counsel's efforts to retain an expert witness to review the failure of the dock system; and transmitting copy of resume of Don Dusenberry, P.E., of SGH.
84	03/29/2004	RH	DFG		Facsimile	MacMillan Pier	Fax cover sheet transmitting March 24, 2004 letter of Attorney Rosemary Hayes to Town Counsel.
85	06/24/2004	RH	KB	DFG	Facsimile	MacMillan Pier Reconstruction	Discussion regarding Town Counsel's opinion of the Town's claims arising out of the failure of the dock system.

86	09/10/2004	KB	RH		Facsimile	Floating Dock System	Fax cover sheet transmitting copy of 9/13/04 Agenda Action Request memorandum from KB to BOS regarding Town's litigation strategy.
87	12/09/2004	RH	KB		Facsimile	MacMillan Pier Reconstruction	Discussion regarding Town Counsel's efforts to retain an expert witness to review the failure of the dock system.
88	12/10/2004	RH	KB		Facsimile	MacMillan Pier Reconstruction	Transmitting, and discussion regarding, the Litigation Matrix.
89	12/14/2004	KB	RH		Facsimile	Restoration of the MacMillan Pier Floating Dock System	Fax cover sheet transmitting copy of 12/14/04 memo from KB to DFG and RM regarding Town's plan for the repair of the dock system.
90	03/31/2005	RH	KB	DFG	Facsimile	MacMillan Pier, Floating Dock System	Transmitting, and discussion regarding, the settlement agreement signed by AGM.
91	03/31/2005	PH	RH	KB, BOS	Letter	Settlement Agreement/Sig nature Page	Transmitting signature page of settlement agreement signed by Town.

John W. Giorgio, Esq. (JWG) – Kopelman and Paige, P.C., Town's counsel.

Keith Bergman (KB) – Town Manager.

David F. Guertin (DFG) – Director, Town's Dept. of Public Works.

Richard Holland, Esq. (RH) – Kopelman and Paige, P.C., Town Counsel.

David Doneski, Esq. (DD) – Kopelman and Paige, P.C.

Sandra Turner (ST) – Deputy Director, Town's Dept. of Public Works.

Michelle Jarusiewicz (MJ) – Assistant Town Manger.

Regina "Ginny" Binder (RB) – Building Committee Member.

Rex McKinsey (RM) – MacMillan Pier Manager.

Board of Selectmen (BOS) – Provincetown Board of Selectmen.

Pam Hudson (PH) – Secretary to the Town Manager.